

APPEAL NO. 031967
FILED SEPTEMBER 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 26, 2003. The hearing officer determined that the appellant's (claimant) compensable (left arm, right shoulder, and low back) injury of _____, does not include an injury to the cervical spine. The claimant appeals on sufficiency of the evidence grounds and asserts that the hearing officer erred in failing to admit a medical report submitted by the claimant. The respondent (carrier) filed an untimely response and it will not be considered.

DECISION

Affirmed.

We first address the claimant's evidentiary objection. The claimant asserts that the hearing officer erred in failing to admit a medical report, which she offered into evidence. Parties must exchange documentary evidence with each other not later than 15 days after the benefit review conference and thereafter, as it becomes available. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). The claimant admitted that the medical report in question was not timely exchanged. The hearing officer determined that the medical report was not timely exchanged, and that no good cause existed for the untimely exchange. To obtain a reversal on the basis of admission or exclusion of evidence, it must be shown that the ruling admitting or excluding the evidence was error and that error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been stated that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We conclude that the hearing officer properly excluded the complained-of medical report on the grounds of no timely exchange and no good cause shown.

Next we address the extent of injury issue. Extent-of-injury is a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviewed the record and the extensive conflicting medical evidence, and was not persuaded that the compensable injury of _____, extended to or included an injury to the claimant's cervical spine, or that the claimant's cervical spine condition was causally related to the compensable injury of _____. We conclude that the hearing officer's determination is sufficiently supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **COMBINED SPECIALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge